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2015 JUN 16
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A 11:16
COURT

8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

10 ELIAS STAVRINIDES,

11 Plaintiff,

12 vs.

13 PACIFIC GAS AND ELECTRIC
14 COMPANY;

15 Defendant.

)CASE NO: 3:16-CV-00433-WHA

)

)PLAINTIFF STAVRINIDES RESPONSE TO

)DEFENDANT PGE OPPOSITION TO

)PLAINTIFFS LEAVE TO FILE FIRST

)AMENDED COMPLAINT

)

)TIME: 8:00 AM

)DATE: June 16, 2016

)CTRM: 8, 19TH Floor

)

)

)

)

16 COMES NOW, Plaintiff Stavrindes, timely responding to Defendant's Pacific Gas and
17 Electric Company (hereinafter PGE) Opposition to Stavrindes Motion for Leave to file First
18 Amended Complaint (hereinafter FAC).

19 In Defendants **I. ARGUMENT** Defendant PGE states the FAC does not cure the
20 deficiencies identified in the April 21, 2016 order. P.1:5-6. Plaintiff objects and specifically
21 identifies as such below.

1 **In Defendants B. The Proposed Complaint is Factually and Legally Deficient; PGE**
2 erroneously contends that the FAC is attempting to advance claims barred by res judicata.
3 Plaintiff objects and specifically addresses these items below.

4 **In Defendants B. 1. The Proposed Amendment Complaint Ignores the Court's**
5 **Explicit Instructions;** PGE is attempting to assert that the FAC is basing the FAC on the same
6 nucleus of facts alleged in the 2015 complaint which is res judicata. p2:15-16.

7
8 Further stating the FAC is based on the same exact calls already alleged in the 2015
9 complaint. P.2:19-20. NOT SO.

10 It is Plaintiffs assertion that each violation of the TCPA is a separate and distinct action
11 and damage, Plaintiff previously likened it to a car accident. It is NOT res judicata for ANY
12 AND ALL CALLS MADE BY DEFENDANT PGE made in this time period. It is each separate
13 and distinct action by PGE, which damaged Plaintiff. There is a 4 year statute of limitations to
14 bring an action for each and every damage, or violation of statute.

15
16 In the FAC, each call is a separate and distinct action by PGE against Plaintiff, which was
17 not included in the 2015 complaint. In the FAC Plaintiff explicitly outlines, identifies, and
18 addresses any res judicata from the 2015 case. ¶12, ¶15, ¶17, ¶20.

19
20 **In Defendants B. 2. The Fourth cause of Action Fails because Plaintiff Consented to**
21 **the January 11, 2016 call. NOT SO.**

22 Plaintiff clearly states in Factual Allegations ¶8, ¶9, & ¶10, no prior or present
23 relationship, never given PGE cell phone, and never given PGE permission to call Plaintiff cell
24 number.

25
26 Defendants cite ¶13 from Plaintiff FAC from a letter written to PGE to Mr. Earley, CEO,
27 and Ms. Cheng, Agent, of Plaintiffs notice to commence action. This communication authorized
28

1 Mr. Earley or Ms. Cheng **ONLY** to contact Plaintiff regarding settlement. Doc 34-1 attached to
2 Defendant Opposition. Refer to the last paragraph which states '**You may use my cell phone**
3 **number listed below or email for this purpose only.**'. Then look at the first page, you will
4 notice that it is stamped "RECEIVED" Anthony F. Earley. Jr., April 24, 2015. Plaintiff could not
5 have been any clearer who could call and for what purpose.
6

7 Defendant is attempting to confuse the January 11, 2016 call, which was factually alleged
8 as ATDS (automated with pre-recorded voice) as authorization, because Plaintiff explicitly
9 authorized Mr. Earley and Ms. Cheng to contact Plaintiff on his cell phone for another purpose
10 only.
11

12 Defendant attempts because of the fore mentioned written authorization, that there is no
13 liability under TCPA because cell phone number was provided to creditor . . . p.3:17-19.

14 Defendant attempts because of for mentioned written authorization, that Plaintiff
15 consented to the January 11, 2016 ATDS call because of same and that Plaintiff did not revoke
16 written consent. p.4:6-8; 11-13.
17

18 Plaintiff did not need to revoke his written authorization, as the authorization was
19 specifically granted to two specific people of Defendant and for what purpose. The January 11,
20 2016 call is not from either of these people nor for the permission granted for the call, which was
21 for specifically resolution of the items in the letter granting authorization of the specific call.
22

23 **In Defendants B. 3. The ATDS Allegations do not correct the flaws identified in the**
24 **Order Dismissing the Original Pleading. NOT SO.**

25 Defendants cite "Courts in this district frequently dismiss TCPA claims for failing to
26 allege facts demonstrating actual use of an automated telephone dialing system." p6:9-11.
27
28

1 Plaintiff correctly factually alleges the specific acts by Defendant. It is, was, and is dialed
2 by a machine, not human hands, not a human voice, but an automated dialing system and a pre-
3 recorded voice. **The statute is written for 'a call autodialed with ATDS capabilities.'** Please
4 focus on the word capabilities. If Defendant is disputing their system does not have this
5 capability, let them dispute this. This is a matter for a fact finder to decide as it is properly
6 factually alleged.
7

8 **In Defendants B. 4. Intentional Infliction of Emotional Distress does Not State a**
9 **claim. NOT SO.**

10 Plaintiff properly alleged (2) severe emotional suffering; and (3) actual and proximate
11 causation of the emotional distress. See Opposition p7:17-18. The question is did I properly
12 allege (1) outrageous conduct p.7:15-17.
13

14 Defendants are attempting to limit their exposure stating only the four (4) calls alleged in
15 the complaint. A review of the history of the case, the Defendants exhibits Doc 34-1 for all
16 purposes. This letter dated April 20, 2015 clearly states 22 calls from PGE as of that date. The
17 Court is aware that the actions of PGE also included reporting on Plaintiffs credit reports, and
18 selling collection of accounts to third party debt collectors who also reported on Plaintiffs credit
19 reports. Plaintiff has specifically called PGE to stop calling, written to PGE to stop collection
20 action, etc.
21

22 Plaintiff alleges that he does not have to explicitly identify each and every causation to
23 get past the rule 8a pleading stage for a prima facie complaint, and that if Defendants pattern,
24 practices and actions can be brought in at later by and through discovery or other means.
25

26 **DEFENDANTS CONCLUSION:** is requesting the Court deny Plaintiffs request for
27 leave to amend his complaint. Plaintiff objects for the reasons stated above.
28

1 In the event Plaintiff needs to specifically allege additional facts for the courts own
2 clarification, Plaintiff requests Court to identify where Plaintiff is deficient and Plaintiff requests
3 leave of court to again file an Amended Complaint.

4
5 June 10, 2016

6 Respectfully submitted:

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1 **PROOF OF SERVICE**

2 The undersigned declares as follows:

3 I am a resident of the County of Sonoma, State of California, and at the time of service
4 I was over 18 years of age and not a party to this action. My address is
5 150 RALEY TOWN CENTER, STE 2512, ROHNERT PARK, CA 94928

6 On the below date: I served the following document (s) described as:
7 RESPONSE TO OPPOSITION TO FILE FAC case 3:16-cv-00433-WHA

8 I served the documents on the persons below, as follows:
9

10 SINNOTT, PUEBLA, CAMPAGNE ETC
11 TWO EMBARCADERO CENTER STE 1410
12 SAN FRANCISCO, CA 94111

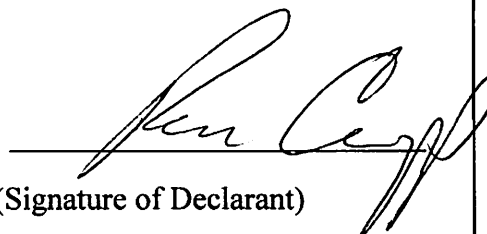
13 X (BY MAIL) I placed said document(s) in a sealed envelope, with postage thereon fully
14 prepaid for first class mail, and placed such envelope in the United States mail at Sonoma
15 County, California.

16 I declare under penalty of perjury under the laws of the State of California that the foregoing is
17 true and correct.

18 Date: June 10, 2016 at Santa Rosa, California.

19 RONALD CUPP

20 (Type or Print Name of Declarant)

21
22
23
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28

(Signature of Declarant)